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No. 99-128

IN THE
Supreme Court of the United States

ALASKA CIVIL LIBERTIES UNION,
Petitioner,

v.

STATE OF ALASKA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Alaska

BRIEF IN OPPOSITION

Of Counsel:

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

* Counsel of Record

BRUCE M. BOTELHO
Attorney General
DAVID T. JONES *
JAN HART DEYOUNG
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501
(907) 269-5100
Counsel for Respondent

WILSON-EPES PRINTING CO., INC. - (202) 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED

1. Whether this Court lacks jurisdiction because the Alaska Civil Liberties Union does not have standing in federal court to challenge on its own behalf the Alaska campaign finance reform statutes?

2. Whether this Court should review the finding of the Alaska Supreme Court—based upon "more than 1800 pages of documents" (Pet. App. 5a)—that the State of Alaska has presented sufficient evidence to meet the "real harm" or "real problem" standard justifying campaign finance controls—the standard that the Alaska Civil Liberties Union itself argues should be applied in this case?

3. Whether this Court should grant certiorari to review the Alaska Supreme Court's 81-page decision that the various provisions of Alaska's campaign finance reforms comport with this Court's precedents, a decision on which there is no conflict of authority in the state or federal courts?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	v
JURISDICTION	1
STATEMENT OF THE CASE	1
The Motives for the Reforms	2
The Reforms' Provisions	7
The Proceedings Below	9
REASONS FOR DENYING THE WRIT	10
I. AkCLU LACKS STANDING TO BRING ITS CHALLENGE TO FEDERAL COURT	11
II. THE ALASKA SUPREME COURT APPLIED THE STANDARD OF PROOF THAT AkCLU CONTENDS IS CORRECT	17
III. THE COURT'S GRANT OF CERTIORARI IN *NIXON V. SHRINK MO. GOV'T PAC* DOES NOT JUSTIFY HOLDING AkCLU'S PETITION	18
IV. THE ALASKA SUPREME COURT PROPERLY CONSIDERED AND CORRECTLY APPLIED THIS COURT'S DECISIONS IN *BUCKLEY* AND *COLORADO REPUBLICAN*	20
A. The Alaska Supreme Court Correctly Concluded that *Colorado Republican* Is Not on Point	20
B. The Alaska Supreme Court Carefully Considered *Buckley* and Correctly Applied It	22

TABLE OF CONTENTS—Continued

Page

V. THE ALASKA SUPREME COURT'S EVIDENTIARY DETERMINATION REGARDING LEGISLATION UNIQUE TO ALASKA DOES NOT PRESENT ISSUES THAT MERIT THIS COURT'S REVIEW 22

CONCLUSION 23

TABLE OF AUTHORITIES

CASES

	Page
ASARCO Inc. v. Kadish, 490 U.S. 605 (1989)	13, 19
Arizonans for Official English v. Arizona, 520 U.S. 43 (1997)	12, 14
Bender v. Williamsport Area Sch. Dist., 475 U.S. 534 (1986)	12, 13
Buckley v. Valeo, 424 U.S. 1 (1976)	*passim*
Colorado Republican Fed. Campaign Comm. v. FEC, 518 U.S. 604 (1996)	10, 20, 21
Lewis v. Casey, 518 U.S. 343 (1996)	15
Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)	12, 13
Nixon v. Shrink Mo. Gov't PAC (No. 98-963)	11, 18, 19
Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985)	12, 16
Ross v. Moffitt, 417 U.S. 600 (1974)	17
Secretary of State of Maryland v. Joseph H. Munson Co., 467 U.S. 947 (1984)	16
Shrink Mo. Gov't PAC v. Adams, 161 F.3d 519 (8th Cir. 1998)	18, 19
Sierra Club v. Morton, 405 U.S. 727 (1972)	14, 16
Sonneman v. State, 969 P.2d 632 (Alaska 1998)	15
Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998)	15
United States v. Hays, 515 U.S. 737 (1995)	15
Virginia v. American Booksellers Ass'n, Inc., 484 U.S. 383 (1988)	16
Warth v. Seldin, 422 U.S. 490 (1975)	11, 13
Whitmore v. Arkansas, 495 U.S. 149 (1990)	14

STATUTES

1996 Alaska Sess. Laws ch. 48, §§ 11, 12	8
Alaska Stat. § 05.15.150 (Lexis 1998)	9
Alaska Stat. § 15.13.070 (Lexis 1998)	7, 8, 21
Alaska Stat. § 15.13.072 (Lexis 1998)	9
Alaska Stat. § 15.13.074 (Lexis 1998)	8, 9
Alaska Stat. § 15.13.112 (Lexis 1998)	7
Alaska Stat. § 15.13.116 (Lexis 1998)	8
Alaska Stat. § 15.13.135 (Lexis 1998)	21

TABLE OF AUTHORITIES—Continued

MISCELLANEOUS

Page

U.S. Const. art. III 1, 13, 14, 15
Sup. Ct. R. 10 17

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BRIEF IN OPPOSITION

JURISDICTION

This Court lacks jurisdiction because, as explained below, the Alaska Civil Liberties Union (hereinafter AkCLU) does not have standing to bring this matter before the Court. AkCLU has failed to demonstrate the existence of any actual or prospective injury that would afford it standing under Article III of the Constitution. *See infra* pp. 11-16.

STATEMENT OF THE CASE

The Alaska State Legislature responded to concerns over actual or apparent corruption in Alaska by reforming state campaign finance laws in 1996. The legislature adopted a unique combination of many varied statutory devices to address Alaska's campaign finance concerns.

The Motives for the Reforms

Alaskans had reason to be concerned about the integrity of their campaign finance system. Studies of campaign contribution patterns in 1986 and 1987 indicated that contributors were able to evade the purposes of Alaska's previous campaign finance statutes by directing contributions through interconnected corporations and individuals. Larry Makinson, *Open Secrets* 4, 14-15, 17 (1986) (Ex. F to State's Mem. Opp'n Pl.'s Mot. Summ. J. (Mar. 13, 1998) [hereinafter Opp'n Mem.]); Larry Makinson, *Open Secrets* 4, 14-15, 17 (1987) (Ex. E to Opp'n Mem.). A study of contributions to Alaska's 1990 election campaigns reinforced the belief that individual voters were losing influence with their elected representatives, who were dependent upon political parties, labor unions, and corporate special interests to finance their campaigns. Western States Center, *Money in Western Politics, Alaska 1990 Elections, A Study in Campaign Financing* (1992) (Ex. G to Opp'n Mem.). An analysis of contributions to campaigns in Alaska's 1994 election cited examples of contributors' unlawful use of related persons and organizations as conduits to provide large contributions to candidates. Alaska Public Interest Research Group, *The Best Politicians Money Can Buy* 000858-60 (Nov. 1995) (Ex. JC-1 to Opp'n Mem.). Throughout this period, reports in Alaska's largest newspaper, the *Anchorage Daily News*, described contribution practices that provided additional cause for Alaskans to believe that their campaign finance system needed repair. Pet. App. 43a, 47a-48a; Ex. MF-2 to Opp'n Mem.

Even insiders to Alaskan politics recognized the need for reform. A 1990 report of a confidential survey of lobbyists, legislators, and public officials in Alaska noted that "the level of trust and confidence in the integrity of the legislature is disturbingly low." Government Ethics

Center, *Report to the Alaska State Senate* 7 (Apr. 2, 1990) (Ex. H to Opp'n Mem.) (cited at Pet. App. 6a). A significant percentage of the survey respondents acknowledged a serious problem caused by calculated evasions of the purpose and spirit of Alaska's campaign finance laws through legalistic techniques. *Id.* at 22. The survey also produced striking findings concerning the effects of campaign contributions and fundraising on legislators' actions. For example, 47 percent of the responding lobbyists reported that at least a quarter of the sitting legislators could be influenced by campaign contributions to take or withhold some significant legislative action. *Id.* at 16. Of the responding lobbyists, 35 percent believed that special interests that provided financial support to legislators had a significant advantage in obtaining access to and persuading legislators. *Id.* at 15, 24.

The State submitted to the trial court affidavits of current and former officeholders in Alaska that described in remarkably candid terms their struggles of conscience in balancing the influence of campaign contributions against their duties to serve the public. For example, former Alaska Governor Jay Hammond stated that, after receiving a contribution from oil interests for one of his successful legislative campaigns, he initially resolved to support a measure that the oil interests would not favor, in order to prove his independence. Aff. J. Hammond 3 (Ex. JJ to Opp'n Mem.). After additional thought, however, he concluded that voting for the measure because of the contribution would be just as wrong as voting against it because of the contribution. *Id.* Former Governor Hammond ultimately voted for the measure, and, he said, "[a]lthough I like to think that I cast those votes based on the merits of each bill, to this day I am not sure of my true motivation." *Id.* at 4; Pet. App. 49a.

Other former public officials described similar experiences. A former member of the Alaska Legislature, David Finkelstein, admitted that although he resisted the influence of large contributions in voting on major bills, large contributors did influence his votes on some minor issues about which he knew little. Aff. D. Finkelstein 3-4 (Ex. LL to Opp'n Mem.); Pet. App. 49a. While he was a member of the Anchorage Municipal Assembly, Charles Wohlforth stated that

> I have at times found it impossible to dissect my own motives in voting on complex issues with conflicting and incomplete information and faced by advocacy from important contributors to my campaigns. Despite my best efforts and particular concern about campaign finance reform, I cannot with complete confidence say I have never been influenced by campaign contributions.

Aff. C. Wohlforth 3 (Ex. MM to Opp'n Mem.); Pet. App. 49a-50a.

Mr. Wohlforth also noted the effect of contributions on the outcome of Assembly votes, observing that "[t]he times when the outcome of an issue is in real doubt usually is when neither side of the issue has money or both do." Aff. C. Wohlforth 3 (Ex. MM to Opp'n Mem.). Mr. Wohlforth stated that both he and members of community groups had "become disillusioned with a process in which campaign money often seems to mean more to decisions than debate, deliberation and the public good." *Id.* at 3-4. Similarly, former Governor Jay Hammond commented that "[i]t is amazing how a flash of green can help clarify an ambiguous policy choice." Aff. J. Hammond 7 (Ex. JJ to Opp'n Mem.).

The experiences of these and other officeholders afforded them insiders' views of the problems with Alaska's

previous campaign finance scheme. Former Governor Steve Cowper explained that "[s]pecial interests place their contributions with elected officials whose constituents don't care about an issue important to the contributor," making "it easier for the elected official to do the bidding of the special interests without concern for the wishes of their constituents." Aff. S. Cowper 3-4 (Ex. HH to Opp'n Mem.). The former governor stated that "most of the money contributed to campaigns comes from interest groups and beneficiary classes, most of which demand and often receive special consideration." *Id.* at 2. He also stated that, under the previous rules, "[c]ontributions were bundled by corporations and unions from officers and employees associated with them so that greater amounts were given to candidates thereby increasing the amount given to a particular candidate and increasing the influence of the core contributor." *Id.* at 4-5 (quoted at Pet. App. 23a). He observed that the wealth of unions and corporations gave them "more influence over elected officials than the individuals who elect them." *Id.* at 5 (quoted at Pet. App. 23a). Former Governor Cowper also stated that, at times, "[m]oney given to a political party by a contributor was earmarked for pass-through to a specific candidate," making "a mockery of contribution limits and turn[ing] political parties into money launderers." *Id.* at 4.

Reports of the agency charged with enforcing Alaska's campaign finance laws further illustrated the need for reform. The Alaska Public Offices Commission's annual reports demonstrated that campaign contributions in small amounts from individual contributors were steadily decreasing as a percentage of candidates' total campaign funds. Alaska Public Offices Commission, *1981 and 1982 Annual Report, Supplemental Tables* 169 (Ex. O to Opp'n Mem.); Alaska Public Offices Commission, *The*

Size of Campaign Dollars, 1988 Legislative Races (Ex. R to Opp'n Mem.); *see also* Western States Center, *Money in Western Politics, Alaska 1990 Elections, A Study in Campaign Financing* 4-A (1992) (Ex. G to Opp'n Mem.). The commission also concluded that contributions during election off-years were a cause for concern, observing that "[t]he lack of contribution deadline and campaign close-out dates fosters the appearance of post-election influence." Alaska Public Offices Commission, *Annual Report to Legislature FY 1989* 10 (1989) (Ex. T to Opp'n Mem.). In addition, in 1989 four of the five commission members supported bans on contributions by political action committees, unions, and corporations, on the belief that "apart from political parties, only those who may vote should be entitled to contribute to candidates," to avoid the appearance that special interests had special influence. *Id.* (quoted at Pet. App. 24a).

Some of the problems that Alaskans perceived in their campaign finance system reflected the State's unique characteristics. For example, although Alaska is the largest State by acreage, only Vermont and Wyoming have fewer residents, and no other State has a lower population density. United States Bureau of the Census, State Population Estimates and Demographic Components of Population Change: July 1, 1997 to July 1, 1998 (1998 estimates) (found at www.census.gov/population/estimates/state/st-98-1.txt)); United States Bureau of the Census, State Rankings List, Persons Per Square Mile of Land Area (1997 estimates) (found at www.census.gov/Press-Release/state02.prn). This diffusion of Alaska's population fosters special concerns over the influence of moneyed interests, particularly in light of the fact that Alaska's capital, Juneau, is inaccessible by road to more than ninety percent of the State's populace. Because Alaska's legislature is geographically isolated from the

State's core population during its legislative sessions, contributions from lobbyists and special interest groups that travel to Juneau are particularly susceptible to the perception that they are buying access to and influence over legislators. Moreover, the fact that Alaska's economy is highly dependent on the development of the State's substantial mineral and wildlife resources heightens concerns over the influence of special interests in Alaska's election campaigns.

The Reforms' Provisions

The campaign finance reforms that the Alaska Legislature adopted in 1996 address these and other problems in a variety of ways. The reform measures limit the use of campaign funds by halting the former practice of allowing candidates to convert contributions to personal income. Alaska Stat. § 15.13.112(b)(2) (Lexis 1998). The reforms also prohibit candidates from using campaign funds to make contributions to other campaigns. *Id.* § 15.13.112 (b)(7).

In addition, the reforms limit the amounts that donors may contribute to candidates. An individual may contribute a maximum of $500 per calendar year to a particular candidate, while a group may contribute no more than $1,000 per year to a candidate. *Id.* § 15.13.070(b)(1) and (c)(1). The limits on political parties' contributions vary depending on the office that the candidate is seeking. *Id.* § 15.13.070(d). The maximum annual contributions that a political party may make range between $100,000 to a gubernatorial candidate and $5,000 to a candidate for municipal office. *Id.* § 15.13.070(d)(1) and (4).

The reform measures also close loopholes in campaign contribution limits by limiting contributions to political parties and groups. An individual may contribute a maximum of $5,000 annually to a political party and a maxi-

mum of $500 per year to a group. *Id.* § 15.13.070(b)(1) and (2). A group may contribute no more than $1,000 per year to another group or a political party. *Id.* § 15.13.070(c)(2).

When adopted, the 1996 reform measures prohibited nonelection-year contributions and, for the most part, contributions to legislative candidates during the legislative session. *Id.* § 15.13.074(c)(1)(B), (2), and (2)(B). However, the Alaska Supreme Court found these limits too restrictive. Pet. App. 69a, 73a. As a result, a contingent provision of the 1996 reforms has taken effect, allowing contributions during the eighteen months preceding a general election. Pet. App. 70a & n.192, 73a.[1]

The 1996 reform legislation also limits post-election contributions. *See* Alaska Stat. § 15.13.074(c)(4) (Lexis 1998); 1996 Alaska Sess. Laws ch. 48, §§ 11, 12. In addition, the reforms require candidates to distribute unused campaign contributions within 90 days after the election (or after the candidate withdraws from the election), and limit the purposes for which candidates may make such distributions. Alaska Stat. § 15.13. 116(a) (Lexis 1998). The reform legislation limits the amount of unused campaign contributions that candidates may carry forward to future campaigns. *Id.* § 15.13.116(a)(7).

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[1] Petitioner AkCLU errs in stating that Alaska's law limits an individual's contributions to a candidate to only 25 percent of the combined primary and general election contribution limit that the Court approved in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). Pet. 2-3. Because the contingent provision allowing an 18-month period to make contributions has taken effect, a contributor may split contributions to a candidate between two calendar years. Thus, while the limit on an individual's contributions to a candidate remains $500 per year, by making maximum contributions in separate calendar years, an individual may directly contribute up to $1,000 to a particular candidate.

The legislature also adopted provisions designed to address public concerns over the influence of special interest groups. The reform measures limit the roles of corporations, other business entities, and labor unions in campaign finance. *Id.* § 15.13.074(f). The reforms also restrict lobbyists' involvement in campaign financing. *Id.* § 15.13.074(g). The reform legislation prohibits the use of charitable gaming proceeds to support candidates, political parties, or any group seeking to influence the outcome of an election. *Id.* § 05.15.150(a)(3). In addition, the reforms limit total contributions that a candidate or group may accept from nonresidents of Alaska. *Id.* § 15.13.072(a)(2)-(3), (e), and (f).

The Proceedings Below

Six months after the 1996 reforms took effect, AkCLU alone—without the participation of any individual members, residents, or candidates as co-plaintiffs—filed a complaint in Alaska Superior Court, challenging the reforms' constitutionality. Compl. for Decl. and Inj. Relief (July 3, 1997). After AkCLU moved for summary judgment, the State opposed AkCLU's motion, cross-moved for summary judgment, and in support of its motion, submitted more than 1800 pages of evidence, including fifteen affidavits (three of which were from former governors), independent studies of campaign contributions in Alaska, a study commissioned by the state senate, news clippings, Alaska Public Offices Commission reports, and campaign disclosure records. More than a year later, the Superior Court granted AkCLU's motion for summary judgment and denied the State's cross-motion for summary judgment. Decision and Order (Aug. 10, 1998). The Superior Court ruled the 1996 reforms invalid in their entirety. *Id.* at 4.

The Alaska Supreme Court granted a stay of the Superior Court's decision, ordered briefing on an expedited

basis, and then reversed the lower court's decision in substantial part. Order (Aug. 13, 1998); Pet. App. 80a-81a. In its review of the Superior Court's decision, the Alaska Supreme Court applied to the substantial factual record the analysis that this Court adopted in its decisions addressing campaign finance issues, from *Buckley v. Valeo* forward. The Alaska Supreme Court affirmed the Superior Court's determination that the bans on pre-election year contributions and on contributions during the legislative session were unconstitutional. Pet. App. 80a-81a. The court adopted a narrow reading of the reforms' restrictions on the expenditures and contributions of entities that do not constitute groups under Alaska's laws, leaving for future challenges determination of the constitutionally permissible scope of those restrictions. Pet. App. 26a-30a, 81a. But the court reversed the Superior Court on the remaining issues, finding that the balance of the 1996 reform measures do not violate the constitutional rights of speech and association. *Id.* at 81a. The Alaska Supreme Court found in the record evidence of "real harm," establishing the State's compelling interest in preventing corruption and its appearance, and held that most of the reforms' provisions were narrowly tailored to serve that interest.

REASONS FOR DENYING THE WRIT

None of the criteria governing certiorari warrant granting the petition. In the first place, this Court lacks jurisdiction to review the decision below because AkCLU lacks standing to challenge the Alaska campaign finance reforms in federal court. In any event, the Alaska Supreme Court below recognized and faithfully applied this Court's decisions—including *Buckley* and *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604 (1996). Its decision does not conflict with any state or

federal court decision. In carefully reviewing the Alaska statutes, moreover, the Alaska Supreme Court applied the "real harm" or "real problem" standard that AkCLU itself argues should be applied. There is no reason for this Court to review the Alaska Supreme Court's determination—based on "more than 1800 pages of documents" (Pet. App. 5a) demonstrating Alaska's unique experience with campaign finance problems—that the challenged portions of the reforms meet that standard.

Nor is there any reason to hold this case for the outcome of *Nixon v. Shrink Mo. Gov't PAC* (No. 98-963). That case presents the question whether campaign finance statutes should be reviewed for First Amendment purposes under the "real harm" standard or a less demanding standard. Since the Alaska Supreme Court has already reviewed the Alaska campaign finance reforms under the more demanding "real harm" standard, *Nixon* will not affect the outcome of this case. And, in any event, since AkCLU lacks standing to challenge the Alaska statutes in this Court, the Court would lack jurisdiction to grant the petition and ask the state supreme court to reconsider its ruling in light of *Nixon*. Thus, this Court should deny this petition now to remove any doubts as to the validity of the Alaska Supreme Court's ruling upholding the challenged provisions.

I. AkCLU LACKS STANDING TO BRING ITS CHALLENGE TO FEDERAL COURT.

This case is a singularly ill-suited vehicle to address any of the questions presented because AkCLU—the only petitioner—lacks standing to challenge Alaska's 1996 campaign finance reform statutes on its own behalf. Standing is a "threshold question in every federal case, determining the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Each federal appellate court is obligated to satisfy itself of its own

jurisdiction, even if the parties are prepared to concede the existence of jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). "Standing to sue in any Article III court is . . . a federal question which does not depend on the party's prior standing in state court." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985) (citations omitted).

"Though some of its elements express merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The "irreducible constitutional minimum of standing" includes three elements. *Id.* First, the plaintiff must have suffered an injury to a legally protected interest. *Id.* Second, there must be a causal connection between the injury and the conduct that is the object of the complaint. *Id.* Third, it must be likely that a favorable decision will redress the injury. *Id.* at 561.

To satisfy the first element of the standing requirements, there must be an "injury in fact." The injury must be concrete and "affect the plaintiff in a personal and individual way." *Id.* & n.1. Federal courts may not "adjudicate challenges to state measures absent a showing of actual impact *on the challenger*." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 48 (1997) (emphasis added). "An interest shared generally with the public at large in the proper application of the Constitution and laws will not do." *Id.* at 64. Furthermore, the injury must be actual or imminent, not merely conjectural or hypothetical. *Defenders of Wildlife*, 504 U.S. at 560.

The party invoking federal jurisdiction bears the burden of establishing the existence of each of these elements of standing. *Id.* at 561. These elements "are not mere

pleading requirements but rather an indispensable part of the plaintiff's case."[2] *Id.* Accordingly, "[i]t is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Warth v. Seldin*, 422 U.S. at 518. Moreover, "it is not 'sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings.'" *Williamsport Area Sch. Dist.*, 475 U.S. at 547 (quoting *Grace v. American Central Ins. Co.*, 109 U.S. 278, 284 (1883)). "[T]he necessary factual predicate may not be gleaned from the briefs and arguments themselves," but "must affirmatively appear in the record." *Id.* at 546-47.

AkCLU has not met this burden. The record discloses no evidence of actual or threatened injury to AkCLU or its members. Rather, AkCLU fires a broadside attack on Alaska's 1996 campaign finance reforms, apparently on behalf of any individual or entity that the reforms may affect.

In its complaint, AkCLU alleged that

> Plaintiff AkCLU is a non-profit corporation established in 1983 with its principal place of business in Anchorage, Alaska. Plaintiff is the Alaska affiliate of the Alaska [sic, American] Civil Liberties Union. The AkCLU's mission is to protect the civil liberties guaranteed by the United States and Alaska Constitutions.

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[2] In *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989), the Court concluded that, if the original plaintiffs lack Article III standing, the Court may nonetheless review a state court decision if the petitioners seeking to invoke the Court's jurisdiction on review (*i.e.*, the defendants in state court) satisfy the standing requirements. *Id.* at 623-24. Here, however, AkCLU is both the plaintiff below and the petitioner seeking review in federal court. Therefore, *ASARCO* is inapposite.

Pl.'s Compl. 1 (July 3, 1997); *see also* Pet. 4. AkCLU did not, however, allege any injury to itself or its members as a consequence of the 1996 reforms. Instead, AkCLU's complaint alleges harm to "people," "persons," "citizens," "candidates," "lobbyists," "nonresidents," and "political parties, corporations, companies, partnerships, firms, associations, organizations, business trusts or sureties, labor unions or publicly funded entities." Pl.'s Compl. at 4-8.

Nowhere in AkCLU's complaint or any affidavit that AkCLU has submitted is there any evidence that AkCLU or its members have suffered the concrete, personal injury necessary to establish standing.[3] "[T]he 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." *Sierra Club v. Morton*, 405 U.S. 727, 734-35 (1972); *see also Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (to meet Article III standing requirements, plaintiff must allege an injury to *himself*). AkCLU alleges injury to no interest other than "the interest shared generally with the public at large in the proper application of the Constitution and laws." *Arizonans for Official English*, 520 U.S. at 64.

AkCLU's failure to establish any "injury in fact" leads inescapably to the conclusion that AkCLU does not have standing to bring to federal court this challenge to the 1996 campaign laws. Because AkCLU has not shown that it or its members have suffered *any* injury, it also

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[3] AkCLU's evidence in support of its position in state court consisted of the affidavits of four individuals. *See* Aff. J. Lottsfeldt (Apr. 10, June 29, and July 16, 1998); Aff. H. Alexander (Apr. 8, 1998); Aff. T. McKay (July 1, 1998); Aff. G. Jacobson (July 16, 1998). Like AkCLU's complaint, none of these affidavits include any assertion of injury to AkCLU or its members as a result of the 1996 reforms. *Id.*

fails to meet the second of the standing requirements—that the party's injury be causally connected to the challenged action. Similarly, AkCLU cannot satisfy the third requirement for standing, redressability. Because AkCLU has demonstrated no injury, a favorable decision plainly could not redress it.

The State of Alaska did not contest AkCLU's standing to challenge the campaign finance reforms in the Alaska courts. Def.'s Mem. Opp'n Summ. J. 33-35 (Mar. 13, 1998). But that does not affect its challenge in this federal court. *See Lewis v. Casey*, 518 U.S. 343, 349 n.1 (1996). Standing in the federal courts is jurisdictional and is not subject to waiver. *Id.; United States v. Hays*, 515 U.S. 737, 742 (1995) (" '[W]e are required to address the issue even if the courts below have not passed on it, and even if the parties fail to raise the issue before us.' " (quoting *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-31 (1990))).

Moreover, the requirements for standing in the Alaska state courts are much less rigorous than the Article III requirements applicable here:

> "Standing in our state courts is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions." Standing is interpreted broadly in Alaska, and we favor "increased accessibility" to our courts.

Sonneman v. State, 969 P.2d 632, 636 (Alaska 1998) (quoting *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987), *cert. denied*, 486 U.S. 1032 (1988)) (citation omitted). By contrast, Article III standing is, of course, constitutionally required. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102 (1998).

In federal courts, analysis of standing includes prudential considerations in addition to the Article III standing requirements. *Phillips Petroleum Co.*, 472 U.S. at 804. These prudential considerations are aspects of the self-restraint of the federal judiciary and the principle of avoiding unnecessary constitutional adjudication. Among these prudential considerations is the limitation that parties normally may assert only their own legal interests rather than those of third parties. *Id.* The Court may relax its prudential considerations in certain First Amendment contexts, but that does not obviate the need to satisfy the constitutionally required standing criteria—which AkCLU cannot do.

Before a court may relax the prudential standing requirements, a party must first satisfy the standing requirements of Article III, including the crucial "injury in fact" requirement. *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 954-55, 958 (1984). Although a party may have standing to assert the rights of the public once a proceeding is properly initiated, the party may not initiate appellate review without demonstrating that it has suffered injury to its own cognizable interests. *Sierra Club*, 405 U.S. at 737 n.12, 740 n.15; *see also Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 392-93 (1988). Because AkCLU cannot satisfy this threshold requirement, it cannot raise the First Amendment claims of others.

AkCLU lacks standing to bring this matter before the Court because there is no evidence in the record or allegation in the pleadings that AkCLU or its members have suffered cognizable injuries as a consequence of the 1996 campaign finance reforms. Accordingly, this Court lacks jurisdiction to consider the merits of AkCLU's petition.

II. THE ALASKA SUPREME COURT APPLIED THE STANDARD OF PROOF THAT AkCLU CONTENDS IS CORRECT.

Even if AkCLU had standing to pursue its challenge in this Court, there is no reason to grant certiorari to review the Alaska Supreme Court's evidentiary determination under what AkCLU itself argues is the correct legal standard. The principal question presented by the petition is whether campaign finance laws must be evaluated under the "real problem" standard. Pet. i. But, as AkCLU acknowledges, the Alaska Supreme Court expressly *applied* this "real harm" standard in reviewing the Alaska campaign finance reforms challenged here. Pet. 8 (citing Pet. App. 16a-18a). Thus, the true nature of AkCLU's objection is not that the Alaska Supreme Court failed to apply the correct legal standard; rather, AkCLU objects to the Alaska Supreme Court's assessment of the sufficiency of the evidence to meet this standard. *Id.* at 9-11.

The voluminous record in this case plainly supports the Alaska Supreme Court's determination that the "real harm" standard was met. But misapplication of the law is not, in any event, a sufficient basis for granting a petition for a writ of certiorari. "A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10; *see Ross v. Moffitt*, 417 U.S. 600, 616-17 (1974). AkCLU's challenge to the Alaska Supreme Court's conclusion that the State of Alaska presented sufficient evidence to meet the "real harm" standard does not justify departure from the Court's customary practice.

III. THE COURT'S GRANT OF CERTIORARI IN *NIXON V. SHRINK MO. GOV'T PAC* DOES NOT JUSTIFY HOLDING AkCLU'S PETITION.

Because the Alaska Supreme Court has already carefully reviewed the evidence under the "real harm" standard that AkCLU argues should be applied, there is no reason to hold this case for the outcome of *Nixon v. Shrink Mo. Gov't PAC* (No. 98-963). While AkCLU cites the Court's decision to grant certiorari in *Nixon* as a reason for granting or deferring disposition of its petition (Pet. 7-11, 22), the Court's grant of certiorari in *Nixon* does not affect AkCLU's petition. The Alaska Supreme Court applied the more demanding "real problem" or "real harm" standard that AkCLU advocates and that the panel of the United States Court of Appeals for the Eighth Circuit applied in the decision at issue in *Nixon*. Pet. App. 16a-18a; *Shrink Mo. Gov't PAC v. Adams*, 161 F.3d 519, 521-22 (8th Cir. 1998). *Nixon* concerns whether the Eighth Circuit panel's "real problem" standard is too demanding and whether that standard is consistent with the Court's decision in *Buckley*. Pet. at 10-16, *Nixon v. Shrink Mo. Gov't PAC* (No. 98-963); Brief in Opp'n of Resps. Shrink Missouri Government PAC and Zev David Fredman at 13-18, *Nixon v. Shrink Mo. Gov't PAC* (Nos. 98-963 and 98-978).

Regardless of whether the Court ultimately concludes that the evidentiary standard that the Eighth Circuit panel applied in *Nixon* was too strict, the results of the Alaska Supreme Court's decision will remain unaffected, because the Alaska Supreme Court applied the *more demanding* standard that is the focus of contention in *Nixon*. The 1996 reforms obviously will withstand a less rigorous standard since the Alaska court found them constitutional under the "real harm" or "real problem" standard. Consequently, the Court's grant of certiorari in *Nixon* pro-

vides no basis for granting AkCLU's petition. For the same reason, there is no reason to hold this petition for the outcome in *Nixon*—whether or not this Court embraces the more demanding "real problem" standard, there would be no need to grant the petition in this case and remand for reconsideration in light of *Nixon*.[4]

That the Alaska Supreme Court found sufficient evidence of "real harm" to establish the constitutionality of the 1996 reforms is unsurprising. The court had before it more than 1800 pages of documents supporting the need for the reforms. Pet. App. 5a. The affidavits, independent studies, state senate study, news clippings, Alaska Public Offices Commission reports, and campaign disclosure records that the State submitted were more than sufficient to demonstrate to the Alaska Supreme Court the existence of "real harm" justifying nearly all of the provisions of the 1996 reforms.

The Alaska Supreme Court's decision that the evidence in this case satisfied the "real problem" standard is not inconsistent with the decision of the Eighth Circuit panel in *Nixon*. In *Nixon*, the panel concluded that the particular evidence offered there was insufficient to meet the "real problem" standard. *Shrink Mo. Gov't PAC v. Adams*, 161 F.3d at 522. Furthermore, the only statutory provision at issue in *Nixon* is Missouri's limit on individuals' contributions to candidates for statewide office. Pet. at 2-4, *Nixon v. Shrink Mo. Gov't PAC* (No. 98-963); Brief in Opp'n of Resps. Shrink Missouri Government PAC and Zev David Fredman at 2-4, *Nixon v. Shrink Mo. Gov't PAC* (Nos. 98-963 and 98-978). AkCLU's challenge to Alaska's laws concerns a much wider

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[4] Furthermore, because this Court lacks jurisdiction to grant this petition, the Court would be unable to take any action on the merits in this case in light of *Nixon*. *See ASARCO Inc. v. Kadish*, 490 U.S. at 620-21 & n.1.

variety of campaign finance limits. AkCLU seeks the Court's review of the constitutionality of "an unprecedented array of campaign finance regulations," including limits on individuals' contributions to candidates, contributions to and from political parties, candidates' use of campaign contributions, and nonresidents' contributions. Pet. 11-21. Accordingly, the Court's grant of certiorari in *Nixon* has no bearing on AkCLU's petition.

IV. THE ALASKA SUPREME COURT PROPERLY CONSIDERED AND CORRECTLY APPLIED THIS COURT'S DECISIONS IN *BUCKLEY* AND *COLORADO REPUBLICAN*.

There is no reason to grant certiorari to review the Alaska Supreme Court's application of *Colorado Republican* and *Buckley* because the court considered those decisions and correctly applied them.

A. The Alaska Supreme Court Correctly Concluded that *Colorado Republican* Is Not on Point.

This Court's decision in *Colorado Republican* is not relevant to the issues that were before the Alaska Supreme Court. AkCLU asserts that its petition presents an issue reserved in *Colorado Republican*: whether the Constitution permits limitation of a political party's expenditures in support of an election campaign that the party coordinates with the candidate. 518 U.S. at 613; Pet. 12. AkCLU argues that the 1996 reforms unconstitutionally restrict political parties' contributions because the law "sweeps within its annual contribution restriction coordinated expenditures made in consultation with an affiliated candidate." Pet. 12. However, the 1996 reforms do not address the specific issue of coordinated expenditures, so the issue was not before the Alaska Supreme Court and the court did not address the issue in its decision.

The Alaska Supreme Court rightly distinguished *Colorado Republican*: "because *Colorado Republican* addresses limits on parties' independent expenditures, not contributions, it does not squarely apply. As noted above, the Court has held that expenditure limits infringe much more directly on speech than do contribution limits." Pet. App. 61a. The restriction on political parties that the Alaska Supreme Court reviewed, Alaska Stat. § 15.13.070(d) (Lexis 1998), sets limits on parties' contributions. Another provision, *id.* § 15.13.135, allows political parties to make unlimited "independent" expenditures. The 1996 reforms do not expressly address the subject of parties' coordinated expenditures. Because AkCLU raised only a facial challenge to the law, there were no facts before the Alaska Supreme Court—and are no facts before this Court now—showing that the law would be applied to limit coordinated expenditures. The prudential considerations that led the Court in *Colorado Republican* to address only the issue arising from the facts before it—the constitutionality of a limit on expenditures that were not coordinated with the candidate—apply with equal force here. The Alaska Supreme Court did not consider the issue of coordinated expenditures because the issue was not before it.

AkCLU also argues that the 1996 reform measures restrict contributions *to* a political party more than *Colorado Republican* and *Buckley* permit. Pet. 13. AkCLU's concern is that the reform measures do not expressly permit unlimited contributions to a political party for the purpose of party building—the "soft money" exception recognized in federal campaign law. Neither *Colorado Republican* nor *Buckley*, however, require that a donor to a political party be able to make unlimited contributions that are earmarked for party building rather than for a candidate's election.

B. The Alaska Supreme Court Carefully Considered *Buckley* and Correctly Applied It.

The Alaska Supreme Court also did not, as AkCLU contends, ignore *Buckley* in its 81-page decision. Pet. 15, 16. To the contrary, the Alaska Supreme Court described *Buckley* as "the wellspring of modern campaign finance jurisprudence" and discussed *Buckley* at length before applying the *Buckley* analysis in its review of the constitutionality of Alaska's 1996 reforms. Pet. App. 8a-14a. AkCLU cites the Alaska Supreme Court's approval of the reforms' provision regulating candidates' post-election use of excess campaign contributions as an example of a restriction on campaign expenditures that is contrary to *Buckley*. Pet. 15-16. The Court in *Buckley* did not, however, address similar restrictions. Moreover, the Alaska Supreme Court applied the analysis that the Court described in *Buckley* in reviewing these "spend down" provisions. The Alaska court concluded that these limits burden speech but that the State's interest in preventing the use of funds retained from previous campaigns to circumvent valid contribution limits is compelling and justifies the restrictions. Pet. App. 74a-75a. Likewise, the Alaska Supreme Court did not, as AkCLU contends, ignore *Buckley* in upholding the various contribution limits. Pet. 16-17. It thoughtfully considered and applied the analysis that the Court developed in *Buckley*. Pet. App. 31a-62a. The *Buckley* analysis, as applied to the evidentiary record before the court, directed the court to its conclusion that those limits are constitutional.

V. THE ALASKA SUPREME COURT'S EVIDENTIARY DETERMINATION REGARDING LEGISLATION UNIQUE TO ALASKA DOES NOT PRESENT ISSUES THAT MERIT THIS COURT'S REVIEW.

AkCLU's petition presents no issues of broad or national significance. The petition simply concerns the

Alaska Supreme Court's decision that the State's voluminous evidence of the uniquely Alaskan experience with campaign finance issues warranted the passage of the challenged legislation and justifies that legislation under the onerous "real harm" standard. The Alaska Supreme Court determined that the particular evidence that the State offered concerning Alaska's own campaign finance experience was sufficient under the "real harm" standard to establish a compelling state interest supporting those particular provisions of Alaska law. That evidentiary determination is not a matter of broad national significance.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

BRUCE M. BOTELHO
Attorney General
DAVID T. JONES *
JAN HART DEYOUNG
Assistant Attorneys General
STATE OF ALASKA
Department of Law
1031 West Fourth Avenue
Suite 200
Anchorage, Alaska 99501
(907) 269-5100
Counsel for Respondent

Of Counsel:

JOHN G. ROBERTS, JR.
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

* Counsel of Record